IN THE SUPREME COURT OF MISSOURI

M.T. & S.T.,	**)**	
Respondents,	**)**	
	)	
	)	**Supreme Court No. 87291**
v.	**)**	
	)	
Craig Lentz,	**)**	
Appellant.	**)**	

IN THE JACKSON COUNTY CIRCUIT COURT
SIXTEENTH JUDICIAL CIRCUIT, DIVISION 41
COMMISSIONER JOHN PAYNE, PRESIDING

In the Interest of :

N.L.B., DOB 12/12/2004	**)**	
Minor Child.	**)**	
	)	**Case No. 0516-FC01293**

BRIEF OF RESPONDENTS, M.T. AND S.T.

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JURISDICTIONAL STATEMENT

This appeal arises from a Judgment of the Honorable Jon R. Gray, Jackson County Circuit Court, Family Court Division, on a contested adoption issue. This matter came before the trial court on Thursday, September 29 and Friday, September 30, 2005. Appellant's rights to Baby Boy Bond were not recognized pursuant to Mo. Rev. Stat. § 453.030(3) in that he failed to register with the putative father registry and file an action to establish paternity within the fifteen (15) day time period after the child's birth. Appellant Craig Lentz alleged the trial court's termination of his parental rights pursuant to § 453.030(3) violated the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. Hence, this appeal involves the validity of § 453.030(3) under the Constitution of this State and jurisdiction is appropriate before this Court pursuant to the exclusive appellate jurisdiction of this Court pursuant to MO. CONSTIT., art. V, § III.

STATEMENT OF FACTS

The minor child who is the subject of this action was born on December 12, 2004, in Cape Girardeau, Missouri to Ibbaanika Bond, the natural mother. (Supp. L.F. 9-12; Tr. 7, Lines 20-25 - Tr. 8, Line 1). A Petition for Adoption was filed with the court on February 15, 2005. (Supp. L.F. 9-12). The natural mother in this matter, Ibbaanika Bond, consented to the adoption of this child and said consent was accepted and approved by the court on February 25, 2005. (L.F. 14-16). Said consent is irrevocable.

The minor child was placed in the temporary custody of the Petitioners on February 25, 2005. (L.F. 14-16). Appellant filed his Third Party Petition for Declaration of Paternity and Petition for and Order of Support vs. Ibbaanika Bond on June 17, 2005, more than six (6) months after the baby's birth and nearly four (4) months after the Temporary Adoptive Custody Hearing. (L.F. 37-42; Tr. 7, Lines 20-25 - Tr. 8, Line 1).

Appellant does not satisfy the requirement of § 453.030.3(2)(a) in that he was not married to the natural mother at the time of the child's birth. (Tr. 12, Lines 17-20). Appellant affirmatively stated and testified in Court on multiple occasions that he and the natural mother in this case never engaged in

sexual intercourse which would have resulted in the conception of the subject child. (L.F. 28; Tr. 11, Lines 22-25; Tr. 12, Lines 1-6; Tr. 13, Lines 9-12).

Appellant, Craig Lentz, does not satisfy the requirement of § 453.030.3(2)(b). A Petition for Declaration of Paternity was not filed within fifteen (15) days of the child's birth, having not been filed until June 17, 2005. (L.F. 9; L.F. 37-42; Petitioners' (M.T. and S.T.) Ex. #7). This was some six (6) months after the birth of the child. (L.F. 37-42; Tr. 7, Lines 20-25; Tr. 8, Line 1).

Appellant did not affirmatively assert paternity pursuant to § 453.030.3(2)(c) by placing his name on the Missouri putative father registry within fifteen (15) days of the child's birth, having not added his name until March 4, 2005. (L.F. 9; L.F. 22; Tr. 8, Lines 2-24). This was some three (3) months after the birth of the child. (L.F. 9, 22; Tr. 7, Lines 20-25; Tr. 8, Line 1; Pet. Ex. #7).

Appellant admitted that he had notice of the fifteen (15) day requirement of the Putative Father Registry. (Tr. 40, Lines 15-25; Tr. 41, Lines 1; Tr. 55, Lines 8-12). Appellant alleges that he did not understand an adoption proceeding was being considered. (Tr. 40, Lines 19-25). Appellant

testified that the requisite forms for placing his name on the Missouri putative father registry and birth certificate were given to him at the hospital where the minor child was born. (Tr. 28, Lines 12-18; Tr. 33, Lines 1-15; Tr. 36 Lines 2-20). These documents were given to Appellant within thirty-six (36) to forty-eight (48) hours after the birth of the child. (Tr. 74, Lines 15-25). Appellant's own signature appeared on Petitioner's (M.T. and S.T.) Exhibit 11 which consisted of separate forms entitled "Reconsideration of Adoption Plan and Removal of Child from Foster Care" setting forth full knowledge that the minor child was in foster care for the purpose of adoption. (Pet. Ex. # 11; Tr. 58, Lines 25; Tr. 59 Lines 1-25; Tr. 60 Lines 1-13; Tr. 90 Lines 12-14). Appellant signed the document but again denied he was the natural father by writing "not the father" next to his name. Id.

Significantly, Appellant removed the child from foster care in Cape Girardeau, Missouri for the purpose of a private adoption after Appellant personally contacted a family in the Kansas City area concerning adoption. (Tr. 65, Lines 2-8). Appellant returned to the Cape Girardeau area after leaving the child in his first foster placement for thirty-eight (38) days. He

and the natural mother then removed the minor child from foster care in Cape Girardeau on January 20, 2005, and immediately drove the child to the house of the Bakers placing the child with the Bakers for foster placement that very evening, January 20, 2005. (Tr. 66, Lines 14-17). The child remained in the Bakers' home, without the presence of the Appellant, from January 20, 2005 until February 25, 2005, at which time the child was placed with the Petitioners. (L.F. 14-16) . The Kansas City, Missouri proceeding took place on February 25, 2005. This length of time the child was in his second foster placement was thirty-five (35) days. (Tr. 66, Lines 14-22).

Appellant was aware of the pending adoption action and was aware of the February 25, 2005, temporary custody hearing in the Kansas City area and voluntarily chose not to attend. (Tr. 67, Lines 19-25; Tr. 68, Lines 1-25; Tr. 69, Lines 1-25; Tr. 70, Lines 16-19; Tr. 88 Lines 7-12).

POINTS RELIED ON

I. THE TRIAL COURT DID NOT ERR IN HOLDING THAT MO. REV. STAT. § 453.030 ALLOWED FOR THE TERMINATION OF PARENTAL RIGHTS WITHOUT A HEARING ON THE UNWED FATHER'S INTEREST BECAUSE THE FIFTEEN (15) DAY PUTATIVE REGISTRY REQUIREMENT WAS NOT MET IN THAT APPELLANT, THE UNWED FATHER, FAILED TO ACT WITHIN FIFTEEN (15) DAYS OF THE CHILD'S BIRTH AND, THEREFORE, LOST THE RIGHT TO WITHHOLD HIS CONSENT WITHOUT VIOLATING HIS DUE PROCESS RIGHTS.

In the Interest of C.J.G., D.S.B, and D.R.B. v. D.G.P., 75 S.W.3d 794 (Mo. App. W.D. 2002).

Lehr v. Robertson, et al, 463 U.S. 248 (1983).

II. THE TRIAL COURT DID NOT ERR IN HOLDING THAT MO. REV. STAT. § 453.030 IS THE CONTROLLING STATUTE AND SAID STATUTE DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION BECAUSE AN UNWED FATHER MUST TAKE AFFIRMATIVE STEPS TO SECURE ADDITIONAL CONSTITUTIONAL PROTECTION IN THAT THE UNWED FATHER, APPELLANT, WAS AWARE OF HIS RIGHTS, BUT FAILED TO EXERCISE THOSE RIGTHS; AND, THEREFORE, WAS NOT DENIED EQUAL PROTECTION.

Caban v. Mohammed, 441 U.S. 380 (1979).

Lehr v. Robertson, et al., 462 U.S. 248 (1983).

M.V.S. v. V.M.D., 776 So.2d 142 (Ala. 1999); *cert denied,* 776 So.2d 142 (Ala. 2000).

III. THE TRIAL COURT DID NOT ERR IN LIMITING THE PRESENTATION OF EVIDENCE TO THE APPLICATION OF MO. REV. STAT. § 453.030 BECAUSE BIFURCATION OF THE ISSUES WAS PROPER IN THAT ONCE APPELLANT'S CONSENT WAS DETERMINED NOT TO BE NECESSARY BECAUSE THE UNWED FATHER, APPELLANT, DID NOT MEET THE REQUIREMENTS OF § 453.030, IN THAT APPELLANT FAILED TO PRESERVE HIS RIGHTS UNDER § 453.030, WHICH WAS DISPOSITIVE TO THE ISSUE OF OBTAINING HIS CONSENT FOR THE ADOPTION; THEREFORE, IT WAS NOT NECESSARY TO DETERMINE HIS PARENTAL FITNESS UNDER ANY OTHER STATUTE.

In the Interest of C.J.G., D.S. B, and D.R.B. v. D.G.P., 75 S.W.3d 794 (Mo. App. W.D. 2002).

State of Missouri ex rel. J.D.S. and J.D.M v. Edwards, 574 S.W.2d 405 (Mo. *banc.* 1978).

IV. THE TRIAL COURT DID NOT ERR IN TERMINATING APPELLANT'S PARENTAL RIGHTS BECAUSE APPELLANT'S CONSENT WAS UNNECESSARY IN THAT APPELLANT DID NOT MEET THE REQUIREMENTS OF § 453.030, AND IN THAT APPELLANT TOOK NO AFFIRMATIVE STEPS TO ENTITLE HIM THE PRESUMPTION OF PARENTAL FITNESS, THEREFORE, IT WAS NOT NECESSARY TO DETERMINE HIS ABANDONMENT OF THE MINOR CHILD.

In the Interest of T.H. and T.H. Crawford v. Ambelang, 497 S.W.2d 210 (Mo. App. W.D. 1973).

State of Missouri ex rel. J.D.S. and J.D.M v. Edwards, 574 S.W.2d 405 (Mo. *banc*. 1978).

ARGUMENT AND AUTHORITIES

I. THE TRIAL COURT DID NOT ERR IN HOLDING THAT MO. REV. STAT. § 453.030 ALLOWED FOR THE TERMINATION OF PARENTAL RIGHTS WITHOUT A HEARING ON THE UNWED FATHER'S INTEREST BECAUSE THE FIFTEEN (15) DAY PUTATIVE REGISTRY REQUIREMENT WAS NOT MET IN THAT APPELLANT, THE UNWED FATHER, FAILED TO ACT WITHIN FIFTEEN (15) DAYS OF THE CHILD'S BIRTH AND, THEREFORE, LOST THE RIGHT TO WITHHOLD HIS CONSENT WITHOUT VIOLATING HIS DUE PROCESS RIGHTS.

In the Interest of C.J.G., D.S.B, and D.R.B. v. D.G.P., 75 S.W.3d 794 (Mo. App. W.D. 2002).

Lehr v. Robertson, et al., 463 U.S. 248 (1983).

A. Standard of Review

The superior court will affirm the trial court's judgment terminating parental rights unless it is not supported by substantial evidence, is against the weight of the evidence, or erroneously applies the law. In Re the Interest of Z.H. v. G.H., 5 S.W.3d 567, 569 (Mo. App. W.D. 1999); In Re Interest of Q.M.B and Q.T.P. v. C.E.P.J., A.B., L.P.H. and John Doe, 85 S.W.3d 654, 657 (Mo. App. W.D. 2002); Murphy v. Carron, 536 S.W.2d 30, 32 (Mo. *banc*. 1976). The trial court's decision to grant an adoption petition will be affirmed on appeal unless the record contains no substantial evidence to support the decision, the decision is against the weight of the evidence, or the trial court erroneously declares or applies the law. Adoption of: H.M.C., M.A.R. and D.M.R. v. N.C., L.T.B., J.B. and E.B, 11 S.W.3d 81, 86, (Mo. Ct. App. 2000) (citations omitted); Murphy v. Carron, 536 S.W.2d 30, 32 (Mo. *banc*. 1976). On review, the Court will consider all evidence and inferences in the light most favorable to the trial court's judgment and disregard all evidence to the contrary. In Re J.D., 34 S.W.3d 432, 434 (Mo. App. W.D. 2000).

B. Discussion

Appellant received the appropriate constitutional protection afforded to him due to his own actions and omissions. Appellant attempts to cloud the issue by asserting that he did not receive constitutional rights or have the same opportunity to be heard and set forth his basis for withholding the consent to the Baby Boy Bond's adoption since he was the unwed natural father of this minor child. This is simply untrue.

The Fourteenth Amendment provides an automatic Due Process protection to any alleged biological parent. To receive additional Due Process protection requires an individual to take some affirmative steps to obtain, secure, and preserve his rights. These affirmative steps require more than simply establishing a biological connection with a child. The biological connection of Appellant to the child was tenuous, at best, due to his consistent denial of intercourse with the natural mother and affirmative statements declaring himself not be the father. (L.F. 28; Tr. 11, Lines 22-25; Tr. 12, Lines 10-16; Tr. 13 Lines 9-12; Pet. Ex. #11). To receive such additional constitutional protection Appellant had to "seasonably demonstrate a

meaningful intent and a continuing capacity to assume responsibility with respect to the supervision, protection and care of the child." See State of Missouri ex rel. J.D.S. and J.D.M v. Edwards, 574 S.W.2d 405, 409 (Mo. *banc.* 1978). Appellant's actions fell far short of this standard. Accordingly, Appellant did not take sufficient steps for the trial court to consider his consent in Baby Boy Bond's adoption.

1. Appellant's consent was not required pursuant to Mo. Rev. Stat. § 453.030.

Missouri law is clear that there are only three (3) categories of men whose consent to a minor child's adoption is required. Appellant does not fall into any of these three (3) categories. Pursuant to Mo. Rev. Stat. § 453.030.3 (2) the only man whose consent to the adoption is required is the man who:

(a) is presumed to be the father pursuant to the subdivision (1), (2) or (3) of subsection 1 of § 210.822; or

(b) has filed an action to establish his paternity in a court of competent jurisdiction no later than fifteen (15) days after the birth of the child and has served a copy of the petition on the mother in accordance with §

506.100; or

(c) has filed with the putative father registry pursuant to § 192.016, a notice of intent to claim paternity or an acknowledgment of paternity either prior to or within fifteen (15) days after the child's birth, and has filed an action to establish is paternity in a court of competent jurisdiction no later than fifteen (15) days after the birth of the child.

Mo. Rev. Stat. § 453.030.3 (2)

a. Appellant did not meet any of the requirements of Mo. Rev. Stat. § 210.822.1.

Appellant clearly did not meet any of the requirements of Mo. Rev. Stat. § 210.822.1 (1), (2) or (3), in that he has was not married to the natural mother and he did not attempt marriage to that natural mother before the birth which said marriage was declared invalid. See Mo. Rev. Stat. § § 453.030; 210.822.1 (1), (2) or (3). (Tr. 12, Lines 17-20).

Appellant did not meet the requirement of § 210.822.1(4) in that he has not presented an expert concluding that blood test shows the alleged parent is not excluded and that the probability of paternity is ninety-eight percent (98%)

or higher, using a prior probability of one-half percent (0.5 %). Appellant argues that a DNA test was completed before the trial court in this case. Appellant attempted to place the results of a DNA test into evidence, but was denied the same due to lack of foundation and authentication. (Tr. 50, Lines 10-17; Tr. 52, Lines 8-14). Appellant's counsel even went as far as to suggest that Appellant performed the DNA testing himself. (Tr. 52, Lines 11-15). There was no valid DNA test properly presented to the trial court establishing Appellant was conclusively the father of this minor child. (Tr. 51, Lines 14-21; Tr. 52, Lines 1-15). Appellant's own continuing denial of paternity, denial of sexual intercourse with the natural mother, and lack of demonstration of responsibility did not lend to his credibility with the trial court. (Supp. L.F. 83-91). Appellant was adamant in his denial of involvement with the natural mother and this minor child.

b. Appellant did not meet any of the requirements of Mo. Rev. Stat. § 453.030.3 (2)(b).

Appellant did not satisfy the requirement of Mo. Rev. Stat. § 453.030.3(2)(b). A Petition for Declaration of Paternity was not filed within

fifteen (15) days of the child's birth, having not been filed until June 17, 2005, nearly six (6) months after the birth of the minor child. (L.F. 37-42).

c. Appellant did not meet any of the requirements of Mo. Rev. Stat. § 453.030.3 (2)(c).

Appellant did not affirmatively assert paternity pursuant to Mo. Rev. Stat. § 453.030.3(2)(c) by placing his name on the Missouri putative father registry within fifteen (15) days of the child's birth, having not added his name until March 4, 2005, nearly three (3) months after the birth of the minor child. See Mo. Rev. Stat. § 453.030.3 (2)(c). (L.F. 9, L.F. 22).

2. Appellant's actions failed to demonstrate an interest in the child.

Appellant's involvement with this child has been de minimis at best and failed to meet the threshold to afford him additional constitutional protection. Significantly, Appellant affirmatively asserted on multiple occasions that he and the natural mother in this case never engaged in sexual intercourse which would have resulted in the conception of the subject child. (L.F. 28; Tr. 11, Lines 22-25; Tr. 12, Lines 1-6; Pet. Ex. #11). Despite this adamant denial of his involvement of the conception of this minor child, Appellant attempted to

investigate and procure an adoption plan while denying paternity to everyone involved in this proceeding. (Tr. 128, Lines 13-25; Tr. 129, Lines 1-14).

Appellant left the minor child in foster care in Cape Girardeau from December 15, 2004, until January 20, 2005, with no contact with the minor child. At that time, Appellant was aware of the pending adoption action in Cape Girardeau, Missouri and the court date concerning the adoption. (Tr. 56, Lines 5; Tr. 57, Lines 1-7). Appellant's next contact with the minor child was when he removed the minor child from Cape Girardeau, Missouri foster care for the purpose of a private adoption after Appellant personally had contacted a family in the Kansas City area concerning adoption. (Tr. 65, Lines 2-8). The minor child had been in foster placement outside the presence of the Appellant for thirty-eight (38) days.

Interestingly, Appellant claimed he was unaware of the adoption proceedings in both cities, but later admitted at trial he was indeed aware of the adoption proceeding both in Cape Girardeau and Kansas City (Tr. 56, Lines 22-25; Tr. 57, Lines 1-7; Tr. 59, Lines 4-7; Tr. 88, Lines 7-12).
Appellant had notice of the pending adoption action and was aware of the

February 25, 2005, temporary custody hearing in the Kansas City area and voluntarily chose not to attend. (Tr. 66, Lines 23-25; Tr. 67, Lines 1-25; Tr. 68, Lines 1-19; Tr. 70, Lines 15-19). Appellant admitted in trial that he had confirmed the Kansas City court date of February 25, 2005, on February 24, 2005. (Tr. 88, Lines 7-12).

Despite these circumstances, Appellant failed to comply with the putative father registry. Appellant admitted on the stand that he had notice of the Missouri putative father registry fifteen (15) day requirement. (Tr. 55, Lines 8-12). Appellant alleges that he did not understand an adoption proceeding was being considered; and, therefore, did not understand the need to register his paternity. (Tr. 40, Lines 15-25). The trial court found Appellant's testimony was not credible. (Supp. L.F. 83-91). Appellant testified that the requisite forms for placing his name on the putative father registry and birth certificate were given to him at the hospital where the minor child was born. (Tr. 74, Lines 15-25; Tr. 75, Lines 1-11). The forms were given to him within thirty-six (36) to forty-eight (48) hours after the birth of the minor child. (Tr. 74, Lines 15-25). Appellant's own signature appeared on Petitioner's

(M.T. and S.T.'s) Exhibit 11 which consisted of separate forms entitled "Reconsideration of Adoption Plan and Removal of Child from Foster Care" setting forth full knowledge that the minor child was in foster care for the purpose of adoption. (Pet. Ex. # 11; Tr. 58, Lines 24-25, Tr. 59, Lines 1-25; Tr. 60 Lines 1-13).

Appellant argued that In the Interest of C.J.G., D.S. B, and D.R.B. v. D.G.P., 75 S.W.3d 794 (Mo. App. W.D. 2002), applied to his facts and circumstances and that the trial court should have waived the fifteen (15) day requirement due to exceptional circumstances. See In the Interest of C.J.G., D.S. B, and D.R.B. v. D.G.P., 75 S.W.3d 794 (Mo. App. W.D. 2002). (Tr.43, Lines 16-25; Tr. 44, Lines 1-16). The trial court found that In the Interest of C.J.G. did not apply nor did any exceptional circumstances in this case. (Tr. 44, Lines 13-16).

In the Interest of C.J.G , et al. involved a natural mother that committed fraud upon the natural father by deceiving the father concerning the birth of the baby. In the Interest of C.J.G., et al., 75 S.W.3d at 798-799. The reasoning of In the Interest of C.J.G., et al., is not applicable in this case. In the present

case, Appellant testified he had been present at the birth of the child, (L.F. 29; Tr. 7, Lines 24-25; Tr. 8, Line 1), cut the child's umbilical cord, intentionally left the child in foster placement in Cape Girardeau and returned to Columbia, Missouri to resume college courses.

The trial court further found that In the Interest of C.J.G., et al. was not applicable in this case because the father never had the opportunity to parent in that case. In the present case, Appellant had more than ample opportunity to support and parent the child, and by his own doing, chose not to participate in the first seventy-five (75) days of the child's life except to transport the child from the first foster placement to the second foster placement without ever actually parenting or financially supporting the minor child. In fact, the minor child, since birth until being placed with the Petitioners on February 25, 2005, was in Appellant's care less than twelve (12) hours. (Tr. 127, Lines 12-19).

Appellant visited with the child on the evening of February 24, 2005, and stated to the trial court that he was present at the foster home to retrieve the child. The trial court found Appellant's testimony as to his intention to retrieve the child to be entirely not credible. (Supp. L.F. 83-91). The credible

evidence presented was that Appellant had appeared in the Bakers' foster home the evening of February 24, 2005, still denying he was the natural father or refusing to state his last name, and voluntarily left the minor child there with full knowledge and confirmation that a court date for the adoption of the minor child was occurring the next day, February 25, 2005. (Tr. 59, Lines 4-7; Tr. 88, Lines 7-12).

Importantly, Appellant did not attempt any legal action on behalf of the minor child prior to or simultaneously with the court proceeding on February 25, 2005. (L.F. 14-16; L.F. 18-22; Supp. L.F. 37-47). Appellant failed to take the necessary steps to demonstrate an interest in the minor child to reach the threshold of additional constitutional protection other than the protection which was inherently already in place.

3. Appellant appropriately received the applicable constitutional protection afforded him under Mo. Rev. Stat. § 453.030.

Appellant argues that the Mo. Rev. Stat. § 453.030 is unconstitutional in its application to him. Appellant's argument is without merit. The very issue of constitutionality has already been addressed by the highest court of the

nation in Lehr v. Robertson, et al. 463 U.S. 248 (1983). In Lehr, a New York State putative father registry was determined not only to be constitutional, but also found not to violate a father's Due Process and Equal Protection Clauses of the Fourteenth Amendment. Id. at 267-268.

Appellant was clearly aware of the requirements and obligations to establish paternity at the birth of the child. (Tr. 55, Lines 8-12; Tr. 74, Lines 150-25; Tr. 75, Lines 1-11). Appellant's own actions in Cape Girardeau, arranging a private adoption in Kansas City, and transporting the child from one foster placement to the second foster placement demonstrated an intent to place the child for adoption and was contrary to a father who wished to affirmatively assert his paternity or to parent the child himself. Additionally, the Appellant never offered financial support on behalf of the minor child on an ongoing basis having tendered only $150.00 to the first foster home after removal of the minor child. (Tr. 116, Lines 11-15).

The most litigated civil rights issues raised by putative father registries relate to the putative father's ignorance of the conception, the birth, or of the registry requirement, and the burdens of the registry requirement. Beck,

Toward a National Putative Father Registry Database (Adoptions) 3 HARV. J.L. & PUB. POL'Y, 25, pp. 1057-1059 (Summer 2002). None of these circumstances apply to Appellant. In direct contrast, Appellant was present at the child's birth and declined to put his name on the birth certificate at that time. This was an affirmative decision to reject legal responsibility for the child. Appellant further did not assume any financial responsibility until thirty-eight (38) days after the birth of the child, January 20, 2005, when he paid $150.00 of the $300.00 to remove the child from foster placement and place the child with in a new foster placement which he had personally arranged. (Tr. 116, Lines 11-15). The only other solitary financial responsibility attempt was to forward a check in the amount of $1,000 nine (9) days before trial on September 30, 2005. The check was deficient on its face and the Appellant amended the check and tendered anew check approximately two (2) days before trial. (Pet. Ex. #14). This token payment came nearly ten (10) months after the birth of the child. Appellant had tendered absolutely no financial assistance toward the rearing of his child since birth other than these two (2) payments. Additionally, Appellant has tendered absolutely no

financial assistance toward the rearing of his child since trial concluded on September 30, 2005.

The putative father registry exists to protect those men who assume legal and financial responsibility for their children in a prompt manner. Beck, *Toward a National Putative Father Registry Database (Adoptions)* 3 HARV. J.L. & PUB. POL'Y, 25, pp. 1057-1059 (Summer 2002). Appellant was present with the newly born child and walked away without assuming any physical, legal or financial responsibility for the child. The Missouri putative father registry exists to forecast the very actions of the Appellant - a father who only asserts his patently defensively and not affirmatively. Baby Boy Bond deserves an opportunity to grow up in the home where people promptly and affirmatively assume responsibility, as the Respondents have demonstrated toward this child since February 25, 2005.

Missouri' s present position, as in other states, is to compel unmarried fathers to legally establish paternity and assume parental responsibility during the period of pregnancy and within a short, limited time thereafter. This advances the best interests of the children either by ensuring the active

participation of birth fathers or securing prompt and permanent adoptive placements. The intention of this system is to enable the father to effectively assert paternity and assume related duties, or to timely foreclose and forego his rights so that the child may safely develop ties to adoptive parents. This also significantly reduces the amount of disrupted placements.

The trial court's findings that Appellant did not meet any of the requirements of Mo. Rev. Stat. § 453.030; and, therefore, his consent to this adoption was not necessary is supported by substantial evidence, is not against the weight of the evidence, is not an erroneously application of the law, and and does not violate the Appellant's Due Process Rights. As such, Appellant's Point One should be denied.

II. THE TRIAL COURT DID NOT ERR IN HOLDING THAT MO. REV. STAT. § 453.030 IS THE CONTROLLING STATUTE AND SAID STATUTE DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION BECAUSE AN UNWED FATHER MUST TAKE AFFIRMATIVE STEPS TO SECURE ADDITIONAL CONSTITUTIONAL PROTECTION IN THAT THE UNWED FATHER, APPELLANT, WAS AWARE OF HIS RIGHTS, BUT FAILED TO EXERCISE THOSE RIGTHS; AND, THEREFORE, WAS NOT DENIED EQUAL PROTECTION.

Caban v. Mohammed, 441 U.S. 380 (1979).

Lehr v. Robertson, et al., 462 U.S. 248 (1983).

M.V.S. v. V.M.D., 776 So.2d 142 (Ala. Cir. Ct. App. 1999); *cert. denied*, 776 So.2d 142 (Ala. 2000).

A. Standard of Review

The superior court will affirm the trial court's judgment terminating parental rights unless it is not supported by substantial evidence, is against the weight of the evidence, or erroneously applies the law. In Re the Interest of Z.H. v. G.H., 5 S.W.3d 567, 569 (Mo. App. W.D. 1999); In Re Interest of Q.M.B and Q.T.P. v. C.E.P.J., A.B., L.P.H. and John Doe, 85 S.W.3d 654, 657 (Mo. App. W.D. 2002); Murphy v. Carron, 536 S.W.2d 30, 32 (Mo. *banc*. 1976). The trial court's decision to grant an adoption petition will be affirmed on appeal unless the record contains no substantial evidence to support the decision, the decision is against the weight of the evidence, or the trial court erroneously declares or applies the law. Adoption of: H.M.C., M.A.R. and D.M.R. v. N.C., L.T.B., J.B. and E.B, 11 S.W.3d 81, 86, (Mo. Ct. App. 2000) (citations omitted); Murphy v. Carron, 536 S.W.2d 30, 32 (Mo. *banc*. 1976). On review, the Court will consider all evidence and inferences in the light most favorable to the trial court's judgment and disregard all evidence to the contrary. In Re J.D., 34 S.W.3d 432, 434 (Mo. App. W.D. 2000).

B. Discussion

The constitutionality of Mo. Rev. Stat. § 453.030 has been addressed by this Court and the highest court in the land. Both courts have held that the provisions of the putative father registry are valid and afford unwed fathers protection under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. Accordingly, Appellant's argument that he was not afforded Equal Protection by the trial application of § 453.030 is without merit.

1. The United States Supreme Court has held statutes similar to Mo. Rev. Stat. § 453.030 did not violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

In Lehr v. Robertson, et al., 462 U.S. 248 (1983), the United States Supreme Court held that the possibility that a putative father may fail to register because of his ignorance of the registry requirement did not make New York's putative father registry law unconstitutional or apparently suffice to excuse the father's inaction. Lehr v. Robertson, et al., 462 U.S. 248, 264 (1983).

The child in Lehr was over two years of age. The father advanced a due process challenge premised upon his allegation that his actual or potential relationship with the child was an interest in liberty that could not be destroyed without due process of law and that the statute's failure to provide him notice deprived him of that liberty interest without due process. Id. at 258-259. The second challenge by the father in Lehr was a gender-based classification of him that he thought denied him the right to consent to the adoption and accorded him fewer procedural rights than the mother; and, therefore, violated the Equal Protection Clause. Id. at 267-268.

The rationale asserted in Lehr by the unwed father is not applicable in this case nor is it substantiated. The right to receive notice was completely within Appellant's control. In fact, Appellant testified he was on actual notice of the Missouri putative father registry fifteen-day (15) requirement and all necessary steps he would need to take to establish paternity. (Tr. 55, Lines 8-12). Appellant testified the documents to complete the Missouri putative father registry were handed to him in the hospital. (Tr. 74, Lines 15-25; Tr. 75, Lines 1-11). Appellant affirmatively did nothing to assert his paternity.

Rather, he sat on his rights. Appellant denied his biological connection to the minor child on multiple occasions. (L.F. 28; Tr. 11, Lines 22-25; Tr. 12, Lines 1-16; Pet. Ex. #11). As such, Appellant demonstrated his reluctance to establish any relationship with the child, let alone take some affirmative step to preserve his rights.

2. The Lehr rationale has been adopted by other jurisdictions.

In a case significantly similar to the case at bar, an Alabama appellate court upheld the validity of its putative father registry. M.V.S. v. V.M.D., 776 So.2d 142 (Ala. Civ. Ct. App. 1999); *cert. denied*, 776 So.2d 142 (Ala. 2000). In this Alabama case, M.V.S. was the biological father who had not established a substantial relationship with the child. He had actual notice of the hearing and participated in the hearing. He visited the child five (5) times in eight (8) months, and provided the natural mother $1,765.00 in child support during that eight (8) months. However, M.V.S. never signed a paternity affidavit, failed to legitimate the child, failed to have his name added to the birth certificate, and failed to register with the putative father registry. Id. at 146-147. Therefore, the Alabama Court held M.V.S. did not have a

constitutional right to withhold his consent. Id. at 154. The actions of the natural father in M.V.S. far outweigh and minimize any token actions taken by Appellant, yet the Alabama Court still found the father's consent unnecessary.

In examining Lehr, the Alabama Court highlighted that notice of adoption be given to seven (7) categories of putative fathers who, as the Lehr Court explained, were likely to have assumed some responsibility for the care of the child. Id. at 155. Included in this category were fathers who had registered with the putative father registry. The Alabama Court explained that the Supreme Court of the United States had reviewed this notice provision and found that it adequately protected the unwed father's inchoate interest in establishing relationship with his child. M.V.S., 776 So. 2d at 146 (quoting Lehr v. Robertson,. 463 U.S. 248, 265 (1983) (citations omitted)).

"When an unwed father demonstrates a full commitment to the responsibilities of parenthood by coming forward to participate in the rearing of his child his interest in personal contact with the child acquires substantial protection under the Due Process Clause. But the mere existence of a biological link does not merit equivalent constitutional protection." Id.

The M.V.S. Court further clarified that its holding did not limit the rights of unwed fathers. "We note, too, that the instant case, like Lehr does not involve the constitutionality of terminating an established familial bond; instead, we are concerned with the constitutionality of terminating the opportunity to form such a bond." Id. at 153.

Accordingly, it is well established that statutes similar to Mo. Rev. Stat. § 453.030 protect unwed fathers, like Appellant's, inchoate interest in establishing a relationship with the minor child. However, courts have also cautioned that a biological relationship alone is insufficient to solidify any preservation of additional constitutional protection.

3. A biological connection alone does not afford an unwed father constitutional protection.

In Lehr, the Supreme Court of the United States reiterated that a biological connection alone does not trigger full constitutional protection, and that only "when an unwed father demonstrates a full commitment to the responsibilities of parenthood by com[ing] forward to participate in the rearing of his child" does his interest in personal contact with his child acquires

substantial protection under the Due Process Clause. Lehr, 462 U.S. at 261. (quoting Caban v. Mohammad, 441 U.S. 380, 389 n.7, 392 (1979)). Lehr further clarified the limitations of the biological connection only, stating that,

> The significance of the biological connection is that it offers the natural father an opportunity that no other male possesses to develop a relationship with his offspring. If he grasps that opportunity and accepts some measure of responsibility for the child's future, he may enjoy the blessings of the parent-child relationship and make uniquely valuable contributions to the child's development. If he fails to do so, the Federal Constitution will not automatically compel a State to listen to his opinion of where the child's best interest lie.

Id. at 262.

Significantly, the direct link between protection of an unwed father and his actions toward the child cannot be ignored. In Caban v. Mohammed, 441 U.S. 380 (1979). Again, the highest court in the land found, "If the father has

not 'come forward to participate in the rearing of his child, nothing in the Equal Protection Clause would preclude the State from withholding from him the privilege of vetoing the adoption of that child'." Caban v. Mohammed, 441 U.S. 380, 396 (1979). Although Appellant ultimately and reluctantly admitted his biological connection to this minor child, his inaction, failure to show any interest in the minor child and his token involvement in the child's life by simply transporting the child from one foster home to another, is insufficient to trigger additional constitutional protection.

The trial court's findings that Appellant did not meet any of the requirements of Mo. Rev. Stat. § 453.030 and his consent to this adoption was not necessary is supported by substantial evidence, is not against the weight of the evidence, is not an erroneously application of the law, and does not violate the Appellant's Equal Protection Rights. As such, Appellant's Point Two should be denied.

III. THE TRIAL COURT DID NOT ERR IN LIMITING THE PRESENTATION OF EVIDENCE TO THE APPLICATION OF MO. REV. STAT. § 453.030 IN THAT BIFURCATION OF THE ISSUES WAS PROPER AND ONCE APPELLANT'S CONSENT WAS DETERMINED NOT TO BE NECESSARY BECAUSE THE UNWED FATHER, APPELLANT, DID NOT MEET THE REQUIREMENTS OF § 453.030, IN THAT APPELLANT FAILED TO PRESERVE HIS RIGHTS UNDER § 453.030, WHICH WAS DISPOSITIVE TO THE ISSUE OF OBTAINING HIS CONSENT FOR THE ADOPTION; THEREFORE, IT WAS NOT NECESSARY TO DETERMINE HIS PARENTAL FITNESS UNDER ANY OTHER STATUTE.

In re the Interest of C.J.G., D.S.B. and D.R.B. v. D.G.P. (75 S.W.3d 794 (Mo.App.W.D. 2002).

State of Missouri ex rel J.D.S. and J.D.M v. Edwards, 574 S.W.2d 405 (Mo *banc.* 1978).

A. Standard of Review

The superior court will affirm the trial court's judgment terminating parental rights unless it is not supported by substantial evidence, is against the weight of the evidence, or erroneously applies the law. In Re the Interest of Z.H. v. G.H., 5 S.W.3d 567, 569 (Mo. App. W.D. 1999); In Re Interest of Q.M.B and Q.T.P. v. C.E.P.J., A.B., L.P.H. and John Doe, 85 S.W.3d 654, 657 (Mo. App. W.D. 2002); Murphy v. Carron, 536 S.W.2d 30, 32 (Mo. *banc*. 1976). The trial court's decision to grant an adoption petition will be affirmed on appeal unless the record contains no substantial evidence to support the decision, the decision is against the weight of the evidence, or the trial court erroneously declares or applies the law. Adoption of: H.M.C., M.A.R. and D.M.R. v. N.C., L.T.B., J.B. and E.B, 11 S.W.3d 81, 86, (Mo. Ct. App. 2000) (citations omitted); Murphy v. Carron, 536 S.W.2d 30, 32 (Mo. *banc*. 1976). On review, the Court will consider all evidence and inferences in the light most favorable to the trial court's judgment and disregard all evidence to the contrary. In Re J.D., 34 S.W.3d 432, 434 (Mo. App. W.D. 2000).

B. Discussion

Appellant next argues that bifurcation of Mo. Rev. Stat. § 453.030 was not proper at trial and his parental fitness under any other statute should have been considered. The trial court did not err by not considering Appellant's parental fitness. Appellant's argument is without merit.

1. The trial court's bifurcation of Mo. Rev. Stat. § § 453.030 and 453.040 was proper.

The trial court properly bifurcated the issues in Mo. Rev. Stat. § § 453.030 and 453.040. The trial court first considered whether or not Appellant had preserved his rights under § 453.030, which the trial court found Appellant failed to do so. As a result, the trial court did not have to reach the issue subject to § 453.040, whether or not Appellant had abandoned the minor child.

It is well established that a trial court has broad discretion to limit the arguments to the issues and not to allow a party to argue theories, claims or defenses, which are not supported by the law. Edwards v. Union Pacific Railroad, Co., 854 S.W2d 518, 520 (Mo. 1993). "The appellate court will defer to the trial court's determination of credibility and to its resolution of conflicts in

the evidence." Adoption of: H.M.C., M.A.R., and D.M.R. v. N.C., L.T.B., J.B. and E.B., 11 S.W.3d 81, 86 (Mo. 2000). A trial court has the discretion to bifurcate issues for the purpose of promoting judicial efficiency. Black's Law Dictionary underscores the rationale of a bifurcated trial explaining, "[In] the trial of the liability issue in a personal injury or wrongful death case is separate from and prior to trial of the damages question. The advantage of so doing is that if the liability issue is determined in defendant's favor there is no need to try the damages questions, which can be an involved one entailing expensive expert witnesses and other proof." BLACK'S LAW DICTIONARY 148 (5th ed. 1979). The same rationale applies in the case at bar. The trial did not need to reach the issue of Appellant's parental fitness since Appellant had not taken any affirmative step to preserve his additional rights under § 453.030.

Because Appellant did not meet the requirements of § 453.030, it was not necessary for the trial court to determine whether or not he had abandoned the child under § 453.040. Accordingly, he was not entitled to the "presumption of fitness" standard due to his own inactions since the birth of the minor child. See Mo. Rev. Stat. § 453.040.

2. Appellant failed to take any steps to entitle him to a presumption of parental fitness.

Appellant's de minimis contact and interest in the child was insufficient to demonstrate a presumption of parental fitness. In Re J.D.S. and J.D.M. v. Edwards, 574 S.W.2d 405 (Mo.1978), this Court has demonstrated how a father would be entitled to such a standard. See In Re J.D.S. and J.D.M. v. Edwards, 574 S.W.2d 405 (Mo. 1978). In Re J.D.S and J.D.M, involved a natural mother who participated in a waiver of consent proceeding. The Division of Family Services placed the child in a foster home for purpose of adoption pursuant to a § 211.447 proceeding. Id. at 407. "The state is free to require an unwed father first to prove that he has seasonably demonstrated a meaningful intent and a continuing capacity to assume responsibility with respect to the supervision, protection and care of the child." Id. at 409. "Upon such demonstration, the father is then cloaked with the benefit of the presumption of fitness essentially the same as that enjoyed by other parents. " Id. at 409.

Although the In Re J.D.S. and J.D.M. case involved an termination of parental rights case pursuant to § 211.447, its reasoning and theories alleged apply

in the present case. See State ex rel. J.D.S. and J.D.M. v. Edwards, 574 S.W.2d 405(Mo. 1978). The Supreme Court of Missouri stated, "We hold that the Missouri Constitution Article, I ss 2 and 10 requires as the appropriate minimum standard that the same presumption of fitness afforded married fathers in parental termination proceedings be afforded to natural fathers **after a reasonable showing of fatherly concern in such cases."** Id. at 409 (emphasis added). Appellant showed no fatherly concern by denying his relationship to the child and failing to affirmatively assert interest or paternity in any manner. Nor did Appellant adequately provide continuing emotional, physical or financial support on behalf of the minor child.

Furthermore, In re the Interest of C.J.G., D.S.B. and D.R.B. v. D.G.P. (75 S.W.3d 794 (Mo.App.W.D. 2002), the natural mother deceived father about the paternity of the case. In re the Interest of C.J.G., D.S.B. and D.R.B. v. D.G.P., 75 S.W.3d 794 (Mo.App.W.D. 2002). In this § 211.447 case, the natural father complained that he was denied DNA testing as requested. D.G.P.'s failure to follow the registry procedure did not extinguish his option to later assert paternity, but his noncompliance with the registry is a fact the court could considered in

exercising its discretion as to whether to order blood testing. Id. at 803. In re the Interest C.J.G., et al., demonstrates that even in a case with extreme facts that involved deceit of the natural mother by the natural father, the trial court still denied the natural unwed father a DNA testing due to his failure to demonstrate an interest in the child or assert his paternity. See In re the Interest of C.J.G., D.S.B. and D.R.B. v. D.G.P. 75 S.W.3d 794 (Mo. App. W.D. 2002). It follows that, the trial court did not err by not reaching the issue of Appellant's parental fitness, under Chapter 453 or any other statute due to his noncompliance with the registry and failure to assert his rights as the putative father.

The trial court's bifurcation of Mo. Rev. Stat. § 453.030 was appropriate as Appellant did not meet any of the requirements of § 453.030 and his consent was not necessary to this adoption is supported by substantial evidence, is not against the weight of the evidence, and is not an erroneous application of the law; and, therefore, no parental fitness determination needed to be made by the trial court. As such, Appellant's Point III should be denied.

IV. THE TRIAL COURT DID NOT ERR IN TERMINATING APPELLANT'S PARENTAL RIGHTS BECAUSE APPELLANT'S CONSENT WAS DETERMINED TO BE UNNECESSARY IN THAT APPELLANT, DID NOT MEET THE REQUIREMENTS OF § 453.030, IN THAT APPELLANT TOOK NO AFFIRMATIVE STEPS TO ENTITLE HIM THE PRESUMPTION OF PARENTAL FITNESS, THEREFORE, IT WAS NOT NECESSARY TO DETERMINE HIS ABANDONMENT OF THE MINOR CHILD.

In the Interest of T.H. and T.H. Crawford v. Ambelang, 497 S.W.2d 210 (Mo. App. W.D. 1973).

State of Missouri ex rel. J.D.S. and J.D.M v. Edwards, 574 S.W.2d 405 (Mo. *banc.* 1978).

A. Standard of Review

The superior court will affirm the trial court's judgment terminating parental rights unless it is not supported by substantial evidence, is against the weight of the evidence, or erroneously applies the law. In Re the Interest of Z.H. v. G.H., 5 S.W.3d 567, 569 (Mo. App. W.D. 1999); In Re Interest of Q.M.B and Q.T.P. v. C.E.P.J., A.B., L.P.H. and John Doe, 85 S.W.3d 654, 657 (Mo. App. W.D. 2002); Murphy v. Carron, 536 S.W.2d 30, 32 (Mo. *banc*. 1976). The trial court's decision to grant an adoption petition will be affirmed on appeal unless the record contains no substantial evidence to support the decision, the decision is against the weight of the evidence, or the trial court erroneously declares or applies the law. Adoption of: H.M.C., M.A.R. and D.M.R. v. N.C., L.T.B. J.B. and E.B, 11 S.W.3d 81, 86, (Mo. Ct. App. 2000) (citations omitted); Murphy v. Carron, 536 S.W.2d 30, 32 (Mo. *banc*. 1976). On review, the Court will consider all evidence and inferences in the light most favorable to the trial court's judgment and disregard all evidence to the contrary. In Re J.D., 34 S.W.3d 432, 434 (Mo. App. W.D. 2000).

B. Discussion

Appellant next argues that the trial court erred in not determining his abandonment toward the minor child pursuant to Mo. Rev. Stat. § 453.030, or any other statute. The same arguments which apply to Appellant's Point III apply to this point. Respondents rely on their arguments in Point III and incorporate by reference such arguments to support their position that it was not necessary for the trial court to determine the issue of abandonment once Appellant did not meet the requirements of § 453.030, which mandated his consent to this adoption.

The trial court did not need to examine this issue in Mo. Rev. Stat. § 453.040, since Appellant did not meet any of the requirements of § 453.030. See Mo. Rev. Stat. § 453.030; § 453.040. Alternatively, if the trial court would have to examined the issue of abandonment, it would find that Appellant's actions and lack thereof, meet the accepted definition of abandonment, a "willful positive act such as deserting a child. " In the Interest of T.H. and T.H. Crawford v. Ambeglang, 497 S.W.2d 210, 211 (Mo. App. W.D. 1973).

As stated herein, the majority of Appellant's involvement with the minor child was in his transportation, along with the natural mother, from one foster home in Cape Girardeau to another foster home in the Greater Kansas City Metropolitan Area. The Appellant voluntarily placed the child in foster care for the first thirty-eight (38) days of his life in Cape Girardeau, parented less than twelve (12) hours in between, and again voluntarily left the child in foster care in Kansas City for the next thirty-five (35) days of the child's life until the hearing on February 25, 2005. The child was in foster care for seventy-three (73) of the first seventy-five (75) days of his life. These limited actions of Appellant are not sufficient to "seasonably demonstrated a meaningful intent and a continuing capacity to assume responsibility with respect to the supervision, protection and care of the child." See State of Missouri ex rel. J.D.S. and J.D.M., 574 S.W.2d at 409.

CONCLUSION

The record clearly demonstrates by substantial evidence, which is not against the weight of the evidence and is not an erroneous application of the law, that Appellant was given amble opportunity to establish the necessary relationship with his biological child and failed to do so; therefore, failing to meet any requirements of Mo. Rev. Stat. § 453.030 which would have required his consent to the pending adoption. The record also demonstrates by substantial evidence and is supported by the weight of the evidence that the trial court properly applied the law in determining whether or not the Appellant's actions met any requirements of § 453.030. The record also reflects that the trial court properly exercised its discretion by bifurcating the proceedings. The trial court correctly proceeded by initially considering Appellant's inherent constitutional protection, if any, pursuant to § 453.030, ultimately finding Appellant failed to meet any of the requirements of § 453.030. Then, the trial court correctly found it was not necessary to proceed to the issue of § 453.040, to determine the issue of abandonment, since Appellant's failure to meet any requirement of § 453.030 was dispositive. The record further demonstrates by

substantial evidence and is supported by the weight of the evidence that Appellant's Fourteenth Amendment Due Process Rights and Equal Protection Rights were considered and protected throughout the proceedings. Appellant received the applicable protections entitled to him afforded by the United States Constitution, which said protections were also appropriately afforded to Appellant under the Constitution of our State due to his own affirmative actions to investigate and attempt to procure an adoption plan as well as his own inactions to establish, obtain and secure his rights concerning the minor child.

WHEREFORE, Respondents respectfully request this Court enter its Order affirming the adoption of Baby Boy Bond by the Respondents.

Respectfully submitted,

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RULE 84.06(C) CERTIFICATION

I hereby certify that Respondents' Brief contains _____ words and _____ lines of double-space type. In determining this count, I relied on Microsoft Word which was used to prepare the brief. I also certify that two 3 ½ floppy discs in which a copy of this Brief is contained has been scanned by Norton Virus and is virus free. I further certify that Respondents' Brief complies with the limitations contained in Rule 84.06 (b).

_____

Cheri Cole Simpkins

CERTIFICATE OF SERVICE

I hereby certify that two true and correct copies of the foregoing were mailed, postage prepaid, this _____ day of August, 2006 to:

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APPENDIX

BOUND SEPARATELY